

ASSEMBLY BILL

No. 1017

Introduced by Assembly Members Portantino and Brownley

February 27, 2009

An act to amend Section 680 of the Penal Code, relating to sexual assault crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1017, as introduced, Portantino. Sexual assault crimes.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses to, upon the request of the victim, and subject to the commitment of resources, inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from their case, whether or not that information had been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified.

This bill would require a law enforcement agency, if it does not analyze the DNA evidence of an assailant of a sexual assault victim within 6 months of obtaining the rape kit evidence where the assailant's identity is an issue, to inform the victim of this fact. The bill would also

require each law enforcement agency responsible for taking or processing rape kit evidence to annually report to the Department of Justice the total number of rape kits in its possession that it has not tested or analyzed, as specified.

The bill would further require each law enforcement agency to report to the Department of Justice the total number of sexual assault crimes reported in its jurisdiction that would require the offender convicted of the crime to register as a sex offender. By imposing new duties on local government agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 680 of the Penal Code is amended to
2 read:
3 680. (a) This section shall be known as and may be cited as
4 the “Sexual Assault Victims’ DNA Bill of Rights.”
5 (b) The Legislature finds and declares all of the following:
6 (1) Deoxyribonucleic acid (DNA) and forensic identification
7 analysis is a powerful law enforcement tool for identifying and
8 prosecuting sexual assault offenders.
9 (2) Victims of sexual assaults have a strong interest in the
10 investigation and prosecution of their cases.
11 (3) Law enforcement agencies have an obligation to victims of
12 sexual assaults in the proper handling, retention and timely DNA
13 testing of rape kit evidence or other crime scene evidence and to
14 be responsive to victims concerning the developments of forensic
15 testing and the investigation of their cases.
16 (4) The growth of the Department of Justice’s Cal-DNA
17 databank and the national databank through the Combined DNA
18 Index System (CODIS) makes it possible for many sexual assault

1 perpetrators to be identified after their first offense, provided that
2 rape kit evidence is analyzed in a timely manner.

3 (5) Timely DNA analysis of rape kit evidence is a core public
4 safety issue affecting men, women, and children in the State of
5 California. It is the intent of the Legislature, in order to further
6 public safety, to encourage DNA analysis of rape kit evidence
7 within the time limits imposed by ~~subparagraphs (A) and (B) of~~
8 ~~paragraph (1) of subdivision (i) of~~ Section 803.

9 (6) A law enforcement agency assigned to investigate a sexual
10 assault offense specified in Section 261, 261.5, 262, 286, 288a, or
11 289 should perform DNA testing of rape kit evidence or other
12 crime scene evidence in a timely manner in order to assure the
13 longest possible statute of limitations, pursuant to ~~subparagraphs~~
14 ~~(A) and (B) of paragraph (1) of subdivision (i) of~~ Section 803.

15 (7) For the purpose of this section, “law enforcement” means
16 the law enforcement agency with the primary responsibility for
17 investigating an alleged sexual assault.

18 (c) (1) Upon the request of a sexual assault victim the law
19 enforcement agency investigating a violation of Section 261, 261.5,
20 262, 286, 288a, or 289 may inform the victim of the status of the
21 DNA testing of the rape kit evidence or other crime scene evidence
22 from the victim’s case. The law enforcement agency may, at its
23 discretion, require that the victim’s request be in writing. The law
24 enforcement agency may respond to the victim’s request with
25 either an oral or written communication, or by electronic mail, if
26 an electronic mail address is available. ~~Nothing in this subdivision~~
27 ~~requires~~ *This subdivision does not require* that the law enforcement
28 agency communicate with the victim or the victim’s designee
29 regarding the status of DNA testing absent a specific request from
30 the victim or the victim’s designee.

31 (2) ~~Subject to the commitment of sufficient resources to respond~~
32 ~~to requests for information, sexual~~ *Sexual* assault victims have the
33 following rights:

34 (A) The right to be informed whether or not a DNA profile of
35 the assailant was obtained from the testing of the rape kit evidence
36 or other crime scene evidence from their case.

37 (B) The right to be informed whether or not the DNA profile
38 of the assailant developed from the rape kit evidence or other crime
39 scene evidence has been entered into the Department of Justice
40 Data Bank of case evidence.

1 (C) The right to be informed whether or not there is a match
2 between the DNA profile of the assailant developed from the rape
3 kit evidence or other crime scene evidence and a DNA profile
4 contained in the Department of Justice Convicted Offender DNA
5 Data Base, provided that disclosure would not impede or
6 compromise an ongoing investigation.

7 (3) This subdivision is intended to encourage law enforcement
8 agencies to notify victims of information ~~which~~ *that* is in their
9 possession. It is not intended to affect the manner of or frequency
10 with which the Department of Justice provides this information to
11 law enforcement agencies.

12 (d) If the law enforcement agency ~~elects~~ *does not to* analyze the
13 DNA evidence ~~within the time limits established by subparagraphs~~
14 ~~(A) and (B) of paragraph (1) of subdivision (i) of Section 803, for~~
15 *the assailant of a victim of a sexual assault offense specified in*
16 *Section 261, 261.5, 262, 286, 288a, or 289, within six months of*
17 *obtaining the rape kit evidence where the assailant's identity of*
18 ~~the perpetrator is in issue, the victim shall be informed, either orally~~
19 *or in writing, of that fact by the law enforcement agency.*

20 (e) If the law enforcement agency intends to destroy or dispose
21 of rape kit evidence or other crime scene evidence from an
22 unsolved sexual assault case prior to the expiration of the statute
23 of limitations as set forth in Section 803, a victim of a violation
24 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
25 notification by the law enforcement agency of that intention.

26 (f) Written notification under subdivision (d) or (e) shall be
27 made at least 60 days prior to the destruction or disposal of the
28 rape kit evidence or other crime scene evidence from an unsolved
29 sexual assault case where the election not to analyze the DNA or
30 the destruction or disposal occurs prior to the expiration of the
31 statute of limitations specified in ~~subdivision (i) of Section 803.~~

32 (g) A sexual assault victim may designate a sexual assault victim
33 advocate, or other support person of the victim's choosing, to act
34 as a recipient of the above information required to be provided by
35 this section.

36 (h) It is the intent of the Legislature that a law enforcement
37 agency responsible for providing information under subdivision
38 (c) do so in a timely manner and, upon request of the victim or the
39 victim's designee, advise the victim or the victim's designee of
40 any significant changes in the information of which the law

1 enforcement agency is aware. In order to be entitled to receive
2 notice under this section, the victim or the victim's designee shall
3 keep appropriate authorities informed of the name, address,
4 telephone number, and electronic mail address of the person to
5 whom the information should be provided, and any changes of the
6 name, address, telephone number, and electronic mail address, if
7 an electronic mailing address is available.

8 (i) A defendant or person accused or convicted of a crime against
9 the victim shall have no standing to object to any failure to comply
10 with this section. The failure to provide a right or notice to a sexual
11 assault victim under this section may not be used by a defendant
12 to seek to have the conviction or sentence set aside.

13 (j) *Each law enforcement agency responsible for taking or*
14 *processing rape kit evidence shall annually report to the*
15 *Department of Justice the total number of rape kits in its possession*
16 *that it has not tested or analyzed. The law enforcement agency*
17 *shall include in its report to the department the number of untested*
18 *or unanalyzed rape kits in its possession by year, covering at least*
19 *the previous five years.*

20 (k) *Each law enforcement agency shall annually report to the*
21 *Department of Justice the total number of sexual assault crimes*
22 *reported in its jurisdiction that would require an offender convicted*
23 *of the crime to register as a sex offender pursuant to Section 290.*
24 *This information shall be provided to the department by the code*
25 *section or sections violated.*

26 ~~(j)~~

27 (l) The sole civil or criminal remedy available to a sexual assault
28 victim for a law enforcement agency's failure to fulfill its
29 responsibilities under this section is standing to file a writ of
30 mandamus to require compliance with subdivision (d) or (e).

31 SEC. 2. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.